IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

1. ***S.B.CIVIL WRIT PETITION NO.1095/1999.***

Chittar. **VERSUS** B.O.R. & Others.

2. ***S.B.CIVIL WRIT PETITION NO.1096/1999.***

Chittar. **VERSUS** B.O.R. & Others.

30.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Chandra Shekhar, for the petitioner.
Mr.Ajeet Bhandari, for the respondent.

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These two writ petition arise out of the two suits. The petitioner is plaintiff and the non-petitioner is defendant. The defendant-non-petitioner filed written statement in which the plaint averments were admitted. The court proceeded on that basis and at a subsequent stage, the defendant failed to appear and even an order for proceeding ex-parte was passed against the defendant-non-petitioner.

Thereafter, the defendant-non-petitioner filed an application for amendment of the written statement filed earlier on the ground that it was obtained by fraud on the grounds mentioned in the said application. The learned trial court allowed the said application by its order dated 17.07.1991 which has been filed as Annexure-9. The petitioner challenged the aforesaid order in revision before the learned Board of Revenue and the learned Board of Revenue allowed the revision vide its judgment dated 01.01.1996 and set aside the order passed by the learned trial court dated 17.07.1991. The

defendants filed a review petition which was also dismissed by the learned Board of Revenue vide its judgment dated 07.02.1996.

The defendants-non-petitioners thereafter filed S.B.Civil Writ Petition No.1125/1996 and 1126/1996 before this court challenging the judgment of the learned Board of Revenue passed in both the revision petitions and the review application. This court vide its judgment dated 15.01.1998 accepted the writ petition and passed the following order:-

> "9. In the premise of the above discussion, these writ petitions are allowed, the impugned orders dated 1/1/96 & 7/2/96 (Ann.5 & 6 respectively) passed by the learned Board of Revenue are hereby quashed and set aside and these cases are remanded to the Board of Revenue with the direction that it should decide petitioner Raghuvar's revision petitioners in both the suits regarding his application dated 3/12/88 filed under O.6 Rule 17 CPC read with Section 151, CPC on merits. The order dated 7/2/96 (Ann.11) passed by the Assistant Collector, Chomu in both the suits are also set aside. The petitioner shall be entitled to re-call the plaintiffs' witnesses, who were examined in his absence and cross examine them, but it is made clear that he shall not be relegated back to the earlier position prior to 14/6/85 when the order for proceeding ex parte against him was passed. The parties are directed to appear before the Board of Revenue on 16/3/98. As the litigation between the parties is pending since 1984, it is expected that the Board as also the Assistant Collector shall expeditiously decide the matter. No order as to costs."

After the above order passed by the learned Single Judge accepting the writ petitions and remanding the matter to the learned Board of Revenue, the Board of Revenue passed the impugned orders and dismissed the revision petitions and upholding the order of the learned trial court allowing the application for amendment of the written statement. Hence, these writ petitions by the plaintiff.

The learned counsel for the petitioner has contended that in the first place, the defendant had already filed a similar application before the learned trial court which was withdrawn by the petitioner and it is thereafter that the present application for amendment of written statement was filed. It is contended that since the application on similar grounds had been filed previously and had been withdrawn, the defendants were precluded from filing the present application.

From the perusal of the Annexure-13, the judgment of this court dated 15.01.1998 passed in S.B.Civil Writ Petition No.1125/1996 and 1126/1996 filed by the defendants, challenging the earlier judgments of the learned Board of Revenue dated 01.01.1996 and 07.02.1996, it is apparent from a perusal of para 2 of the judgment that this court had earlier taken note of the fact that the defendants had filed an application on 07.05.1998 under Order 6 Rule 17 CPC for the amendment of the written statement and which was dismissed as not pressed vide order dated 03.12.1998. This court has further taken note of the fact that on the same day, the petitioner filed yet another application under Order 6 Rule 7 read with Section 151 CPC for the amendment of

the written statement. From the perusal of the above facts and the judgments of this court, it is apparent that it was open for the petitioner to have raised the aforesaid objections before this court when the matter came up before this court but no such objections were taken and/or if raised was not accepted by the court, therefore, I am of the view that the aforesaid plea which was available with the petitioner even at that time not having been taken, the petitioner abandoned the aforesaid objections and, therefore, he cannot be allowed to raise these objections at this stage.

Consequently, the aforesaid objection raised by the plaintiff-petitioner is rejected.

Learned counsel for the petitioner relying upon the certain judgments of the Hon'ble Supreme Court, has contended that it is settled law that an admission once made in the pleadings cannot be easily allowed to be retracted and more so when such admission is retracted as a whole. Learned counsel appearing on behalf of the defendants-respondents, on the other hand, has contended that the defendants in fact moving application under Order 6 Rule 17 read with Section 151 CPC which has been filed as Annexure-8 had given details and the reasons for the retraction of the admissions made in the written statement filed earlier in which it was pointed out that previously the plaintiff who is none other than the brother of the defendant was looking after the various litigations and in the course of those proceedings the plaintiff had got the signatures of the defendants on the blank pie papers and vakalatnama. The details in this regards had been furnished in para 3 and subsequent

paragraphs of the said application under Order 6 Rule 17 CPC for amendment of the written statement. Thus, the case of the defendants is that the aforesaid written statement which was filed earlier and which is sought to be amended was obtained by practicing fraud. So far as the averments with regard to the fraud are concerned, it is correct that the learned trial court ought to have given a finding with regard to the aforesaid facts mentioned in the application as to whether the said written statement was obtained by practicing fraud or not. At this stage, to remand the case for giving a finding on the application would in my opinion further delay the proceedings in the suit which was filed on 13.02.1984. Having said so it is nonetheless necessary for the defendants to explain if it is put to the defendants by the plaintiff during their examination in court as to what were the circumstances leading to fraud as mentioned in the application and the filing of the written statement admitting the claim of the plaintiff.

For the aforesaid purpose, the learned trial court shall frame an issue based upon the averments of fraud as mentioned in the application and the burden for the aforesaid issue shall undoubtedly rest upon the defendants. Needless to say that in case the defendants fails to discharge the burden of explaining the aforesaid facts and prove the averments with regard to the fraud leading to retraction of the admission in the earlier written statement, the plaintiff would necessarily be entitled to get the benefit of the same.

In the light of the above, both the writ petitions are dismissed, subject, to the observations and

directions contained hereinabove.

The learned counsel for the plaintiff/petitioner then submitted that since the amended written statement has been taken on record in which certain new pleas were raised on behalf of the plaintiff and the plaintiff has already examined number of witnesses in the matter, therefore, the plaintiff may also be put at par and be permitted to lead evidence afresh.

To the aforesaid request of the petitioner, learned counsel for the defendants/respondents submits that he has no objection to the same and the plaintiff may be permitted to lead evidence afresh on the issues arising out of the suit including subsequent additional issue which has been ordered to be framed by this court.

Learned counsel for the parties submit that in the light of the amended written statement, if any additional issue is required to be framed, parties may be permitted to suggest the amended or fresh issues.

So far as the above prayer of the learned counsel for the parties is concerned, the same is allowed. It would be open for the parties to move an appropriate application for amendment/framing of fresh issues in the suit in the light of the pleadings.

Consequently, these writ petition are disposed of, as indicated above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.